

STATE OF MICHIGAN
COURT OF APPEALS

JULIE LOMAKOSKI,

Plaintiff-Appellant,

and

DEPARTMENT OF SOCIAL SERVICES,

Intervening Plaintiff,

v

RICHARD REID, M.D., RICHARD REID, M.D.,
P.C., MARK PLEATMAN, M.D., MARK
PLEATMAN, M.D., P.C., and SINAI HOSPITAL,

Defendants-Appellees,

and

SHARADA HULBANNI, M.D., PATHOLOGY
ASSOCIATES, P.C., and STEPHEN DEAN, M.D.,

Defendants.

UNPUBLISHED

April 27, 1999

No. 205287

Wayne Circuit Court

LC No. 96-612176 NH

Before: Saad, P.J., and Murphy and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition in favor of defendants Dr. Reid, Richard Reid, M.D., P.C., Dr. Pleatman, Mark Pleatman, M.D., P.C., and Sinai Hospital pursuant to MCR 2.116(C)(7). We affirm.

Dr. Reid performed laparoscopic surgery on plaintiff in November 1992. During the surgery, Dr. Reid perforated plaintiff's bowel. As a result of the perforation, Dr. Pleatman operated on plaintiff

to correct the problem. Plaintiff was advised of the bowel perforation and

was told that it was a common complication from laparoscopic surgery. Plaintiff contends that in April 1995, she read a newspaper article that alleged that Dr. Reid had disfigured various patients. As a result of this information, plaintiff consulted with legal counsel and obtained her medical records. In August 1995, plaintiff filed a notice of intent to file suit and filed this medical malpractice action in March 1996. Summary disposition was granted in favor of defendants on the grounds that plaintiff should have known of her possible cause of action earlier, and she did not file her complaint within the six-month discovery period. On appeal, plaintiff contends that she trusted the information provided by the doctors that the bowel perforation was the result of a complication and did not suspect malpractice until learning of the April 1995 newspaper article, and therefore her complaint was timely under the six-month discovery rule.

“When reviewing a motion for summary disposition granted pursuant to MCR 2.116(C)(7), this Court must accept as true the plaintiff’s well-pleaded allegations and construe them in a light most favorable to the plaintiff. The motion should not be granted unless no factual development could provide a basis for recovery.” *Stabley v Huron-Clinton Metropolitan Park Authority*, 228 Mich App 363, 365; 579 NW2d 374 (1998).

The trial court did not err in granting summary disposition in favor of defendants. A plaintiff must bring an action for malpractice within two years of when the claim first accrues, MCL 600.5805(1), (4); MSA 27A.5805(1), (4), “or within 6 months after the plaintiff discovers or should have discovered the existence of the claim, whichever is later,” MCL 600.5838a(2); MSA 27A.5838(1)(2). *Solowy v Oakwood Hosp Corp*, 454 Mich 214, 219; 561 NW2d 843 (1997).

In the present case, plaintiff’s laparoscopy performed by Dr. Reid occurred on September 23, 1992. The surgery to correct her perforated bowel was performed by Dr. Pleatman on September 26, 1992. Applying MCL 600.5805(1), (4); MSA 27A.5805(1),(4), plaintiff had two years from the dates of the surgeries to file her complaint. As plaintiff’s complaint was filed March 15, 1996, she has failed to meet the two-year statute of limitations. Therefore, the remaining inquiry is whether plaintiff commenced this action within six months after she discovered or should have discovered the existence of the alleged medical malpractice. MCL 600.5838a(2); MSA 27A.5838(1)(2).

In their respective motions for summary disposition, defendants presented the deposition testimony of plaintiff in which she testified that, sometime between December 1992 and February 1993, she became aware that Dr. Reid had perforated her colon during the procedure. Specifically, the record reveals that on December 14, 1992, at her first post-operative appointment with Dr. Reid, plaintiff learned that Dr. Reid had in fact perforated her colon during the surgical procedure. She further testified that it was then that she surmised that Dr. Reid’s mistake had caused her post-operative complications. Plaintiff also testified that subsequent to the operations performed by Drs. Reid and Pleatman, she was operated on by Dr. Bodzin, who is not a party to this case. According to plaintiff’s testimony, following this operation, Dr. Bodzin told her that Dr. Pleatman had left “a mess” in her abdomen. The record also reveals that in January 1993, plaintiff consulted a psychiatrist, Dr. Herman, who she informed that she had been advised by a doctor (presumably Dr. Bodzin) that her initial surgery was unnecessary. Based

upon this evidence, we conclude that plaintiff was aware that she had a possible cause of action against defendants at least as early as January 1993, and definitely more than six months before she filed her complaint in this case. Accordingly, the filing of the complaint on March 15, 1996, was outside the six-month discovery period.

Affirmed.

/s/ Henry William Saad

/s/ William B. Murphy

/s/ Peter D. O'Connell